

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
SAN FRANCISCO BRANCH OFFICE

**NATIONAL RURAL CARRIERS  
ASSOCIATION (UNITED STATES POSTAL  
SERVICE)**

**CASE NO. 27-CB-245422**

**And**

**ADAM BORRELLO,  
An Individual**

*Todd D. Saveland, Esq.*, for the General Counsel.

*Jean-Marc Favreau, Esq. (Peer, Gan & Gisler LLP)*, for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

**Dickie Montemayor, Administrative Law Judge.** This case was tried before me on January 28, 2020, in Cheyenne, Wyoming. Charging Party (Borrello) filed a charge on July 24, 2019, alleging violations by National Rural Letter Carriers Association (USPS) of Section 8(b)(1) of the National Labor Relations Act, as amended (the Act). Respondent filed an answer to the complaint denying that it violated the Act. After considering the matter (including the briefs filed by the parties on March 3, 2020), and based upon the detailed findings and analysis set forth below, I conclude that the Respondent did not violate the Act as alleged.

**FINDINGS OF FACT**

**I. JURISDICTION**

The complaint alleges, and I find that

1. The charge in this proceeding was filed by the Charging Party on July 24, 2019, and a copy was served on Respondent by U.S. mail on July 25, 2019.
2. The United States Postal Service (Employer) provides postal services for the United States and, in performing that function, operates various facilities throughout the United States, including its facilities in Cheyenne, Wyoming, and Greeley, Colorado (the Facilities).

3. The Board has jurisdiction over Respondent and this matter by virtue of § 1209 of the PRA.

4. At all material times, Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

David Aldredge—Assistant District Representative

Ron Liles—District Representative

David Heather—Director of Labor Relations

6. At all material times, by virtue of Section 9(a) of the Act, Respondent has been the exclusive collective-bargaining representative of the following employees of the Employer (the Unit):

All regular rural carriers, part-time flexible rural carriers, substitute rural carriers, rural carrier associates, rural carrier reliefs, and auxiliary rural carriers, excluding managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined in Public law 91-375, 1201(2), all postal inspection service employees, and all other bargaining unit craft employees.

7. About July 1, 2019, the Charging Party, who was then a member of the Unit, requested in writing, that Respondent provide copies of all documents in Charging Party's grievance file maintained by Respondent and pertaining to the settlement of Charging Party's termination grievance to determine whether he was treated fairly regarding his discipline.

8. About July 2, 2019, Respondent provided the Charging Party with copies of the "grievance chain documents" in the Charging Party's grievance file maintained by Respondent, including the grievance form, appeal, and decision, and some witness statements, but failed to provide copies of any investigatory documents maintained by Respondent.

9. About September 10, 2019, the Charging Party, when he was no longer employed by the Employer, requested in writing, that Respondent provide him with a copy of his entire grievance/HR file maintained by Respondent and pertaining to his

employment with Respondent and pay.

## II. ALLEGED UNFAIR LABOR PRACTICES

### Background

#### A. Agreement Regarding the Scope of the Allegations

The parties discussed entering into a joint stipulation regarding the allegations presented, however instead of entering into a stipulation, the parties resolved the issue with an agreement by the parties regarding the scope of the allegations as follows:

“[T]he General Counsel is only alleging that the six pages being referred to throughout the trial, which are six pages from the United States Postal Inspection Service, are the only ones that are being alleged in the complaint as being violative. So the nonproduction of those documents until October 7th, 2019, is the only thing that's alleged to be the violation—the delay in providing those documents.” (Tr. 56.)

#### B. Factual Background

Many of the facts surrounding the allegation in the complaint are not in dispute. Adam Borrello was a rural letter carrier employed by the USPS in Cheyenne, Wyoming, in 2018. He was a National Rural Letter Carriers Association (NRLCA) member and was represented by Respondent. In November of 2018, he was notified that he would be put in an emergency placement status. Thereafter, he was issued a notice of removal for unacceptable conduct. The allegations upon which the notice of removal were premised involved witnesses who allegedly heard Borrello threatening to beat a co-employee (who was also the union steward) to a “bloody pulp” and further stating that he would, “beat the shit out of her until she is no longer breathing then draw a smiley face on the ground in her blood.” (GC Exh. 4.) His termination was effective December 21, 2018.

After he was terminated, Borrello filed a grievance challenging his removal. The NRLCA district representative, Ron Liles, was the union official designated to handle the grievance at step 2 of the grievance process. Liles was able to resolve the grievance resulting in a negotiated settlement with the USPS. On May 23, 2019, Cindy Burleson, NRLCA regional representative executed the settlement agreement with the USPS which reduced Borrello’s termination to a 14-day suspension and the ability to return to work with back pay. (GC Exh. 2.)

On May 26, 2019, after the settlement agreement was signed by the parties, Burleson mailed Borello a copy of the settlement. Liles coordinated with Borello regarding the settlement and Borrello’s return to work. Liles was able to assist Borrello in his return to work and also assisted in obtaining a transfer as Borello no longer wished to remain at the Cheyenne location given all that had transpired regarding his removal. Borrello was unhappy with the terms of the settlement agreement and inquired of Liles how the settlement was reached and the manner in which the back pay was calculated. He also spoke with Burleson regarding the matter.

On July 1, 2019, Borrello sent an email to David Heather, Respondent's director of labor relations, after previously speaking to him on the telephone, requesting the "formula used to calculate" his back pay and the "grievance paperwork or full report of the most recent grievance in order to see what (if anything) was said" in his defense. (Tr. 30 GC Exh. 3.) After consulting with union counsel, Heather removed statements that had been provided and the Postal inspection service report of investigation from the file. (Tr. 83–86.) Heather was concerned that given the nature of threats involved (including the fact that the employee who was allegedly threatened had obtained a protection order against Borello) if witness statements were provided to Borello those witnesses who provided statements could be subjected to retaliation. With these considerations in mind, he decided to provide only a redacted grievance file to Borello. (Tr. 86.)

On July 2, Mr. Heather mailed Borello the grievance information he requested minus the redacted information. In his cover letter to Borrello, Heather informed Borrello that some documents were withheld in order to protect what Heather described as the union's "significant interest in maintaining the confidentiality of individuals who provide statements to union representatives in the course of grievance investigations." (GC Exh. 4.) Borello thereafter on July 24, 2019, filed the instant charge.

After the General counsel became involved in the processing of the charge, Borello on September 10, 2019, again emailed Heather and asked for a copy of his "entire grievance/HR file" and "whatever exists" that pertained to his employment and "repeated attempts to rectify" his pay issues. (GC Exh. 5.) Heather discussed the matter with union counsel and NLRB Regional officials and thereafter on October 7, 2019, provided Borrello with 6 additional pages of information after redacting identification information of one witness. The information provided consisted of the pages from the US Postal inspection service investigation that were initially withheld. (GC Exh. 6.)

### Analysis

The fundamental principles that govern this case have on numerous occasions been affirmed and revisited by the Board. A union owes all unit employees the duty of fair representation, which extends to all functions of the bargaining representative. When a union's conduct toward a bargaining unit member is arbitrary, discriminatory, or in bad faith, it breaches its duty of fair representation. But a union must be allowed a wide range of reasonableness in serving the unit employees, and any subsequent examination of a union's performance must be "highly deferential." Mere negligence does not constitute a breach of the duty of fair representation. And a union's conduct is arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a wide range of reasonableness as to be irrational. *Airline Pilots v. Association v., Oneil*, 499 U.S. 65, 76 (1991), *Betterroads Asphalt Corp.*, 336 NLRB 972 (2001).

In *Letter Carriers Branch 529*, 319 NLRB 879 (1995), the Board noted that consideration of six factors was called for in order to assist with the determination questions like those presented in this case of whether a union had breached its duty of fair representation and thus violated Section 8(b)(1)(A) of the Act. These factors included the following: (1) the documents requested pertained to a grievance filed by the charging party; (2) the charging party had a legitimate general interest in obtaining the documents; (3) his/her legitimate interest was

communicated to the Union; (4) the Union raised no substantial countervailing interest in refusing to provide the charging party with copies of the requested documents; (5) the ability of the Union to provide copies of the documents; and (6) the relative ease in complying with the request taking into account the amount of documentation requested.

Applying the facts of this case to the standards set forth above, it is readily apparent that the documents pertained to a grievance filed and that the union had the ability to provide the documents with relative ease. The real resolution of the issues presented revolves around factors 2, 3, and 4.

I concur with the General Counsel's contention that Borrello had a legitimate interest in the information that was relied upon in reaching the settlement to further his understanding of whether the settlement reached was "fair." I also agree that Borrello had a legitimate general interest in obtaining the information regarding how the back pay was calculated although it is noted that Borrello presumably already had all the information he needed to calculate back pay.

Nevertheless, despite any interest Borrello may have had, any such interest was clearly outweighed by the union's stated counter veiling interest in protecting witnesses from potential retaliation and potential violence. The Board in *Local 307, National Postal Mail Handlers Union*, 339 NLRB 93 (2003), a strikingly similar case involving an employee that was emergency placed for allegedly threatening another employee, held that if the union had reason to believe that the employee could resort to violence, such rationale would support a finding that the union's failure to provide information was not arbitrary and the union's counter veiling interest in preventing potential violence rendered its actions lawful. The facts of this case weigh even more heavily in favor of the union given that the threat allegedly made in this case was a death threat. I therefore find that the union's actions in delaying providing the information was not so far outside the range of reasonableness as to be irrational and further find that its actions in this regard were not arbitrary.<sup>1</sup> I therefore find that the delay in providing the information pertaining to the grievance did not violate Section 8(b)(1)(A) of the Act.

### CONCLUSIONS OF LAW

1. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

2. Respondent by delaying in furnishing grievance information did not restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act and therefore did not violate Section 8(B)(1)(A) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

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<sup>1</sup> The General Counsel concedes that there is no allegation that, "Respondent's handling of Borrello's grievance was in any way deficient or handled in bad faith." (GC Br. at 10.)

**Order**

The complaint is dismissed.

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Dated, Washington, D.C. April 21, 2020

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A handwritten signature in black ink, appearing to read 'Dickie Montemayor', written over a horizontal line.

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Dickie Montemayor  
Administrative Law Judge